

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Lamberta A.M. Klassen

Docket No.: 381-2 (ROBI-4189)

Serial No.: 10/805,304

Group Art Unit: 1744

Filed: 3/22/2004

Examiner: KARLS, SHAY LYNN

Title: **ANVIL SYSTEM FOR PNEUMATIC RATCHET WRENCH**

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Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

This pre-appeal brief request for review is being filed concurrently with a Notice of Appeal in response to the Final Office Action mailed on April 23, 2007. Appellant requests the above-identified application be reconsidered and allowed in view of the arguments that follow.

**GROUND OF REJECTIONS AND ARGUMENTS**

**Issue 1 - Whether claims 1-6, 12, 16, 28 and 31-32 are patentable under 35 USC 103(a) over USPN 6,905,335 to Fischer in view of USPN 6,253,404 to Boland in view of 5,765,252 to Carr and further in view of USPN 6,836,917 to Blaustein.**

Appellant traverses the rejection of independent claim 1 and dependent claims 2-6, 12, 16, 28 and 31-32 as improper for failing to teach each and every element of the claims and for using improper hindsight. The Fischer '335 patent is directed toward a kit for use by a dental hygienist, whereas the applicant's claim 1 requires a universal handle having a smaller middle diameter for grasping by children aged 1-4 year old and thus teaches away from the claim. The Fischer '335 patent teaches a motorized tool 28 for attachment of the "***dental burs 26 may be coated with a grit to assist the tip in abrading the surface of the tooth at the particular site.***" The applicant's claim 1 requires that the tip be "*made of flexible material dimensioned and configured for use within a vestibule of children aged 1-4 years old,*" which the Fischer '355 patent teaches away from using by teaching abrading tools, which are not flexible and not taught or configured to be training toothbrushes for a child.

The Boland '404 patent teaches an electric tooth brush having replaceable tips, but is silent regarding being configured for use by young children or for training to brush teeth. The '404 patent also fails to teach a handle having a smaller diameter configured for being grasped by children aged 1-4 years old. The Boland '404 device is taught to be dimensioned for use in an adult mouth and is not configured for use by children as described by the applicant's specification.

The Carr '252 patent teaches a gum cleaning device configured to be placed upon a finger for use

by children. However, the Carr '252 patent is silent regarding an applicator brush handle and more specifically one having a narrower middle section for grasping by the child. The Carr '252 patent is also silent regarding replaceable tips on a brush.

The Blaustein '917 patent teaches a toothbrush with a smaller middle section, but it is not configured for use by a child. The '917 patent also fails to teach having cleaning tips configured for use by a child aged 1-4 within their vestibule and the tips are not taught to vary in size to fit a range of vestibule sizes of children.

The combination of the Fischer, Boland, Carr and Blaustein patents fails to teach or suggest each and every element of the applicant's invention of independent claim 1 of a kit for cleaning a child's teeth as shown and discussed above. The cited combination provides no motivation for one skilled in the art to assemble the specific components of claim 1 to train young children to brush teeth without resorting to improper hindsight as evidenced by the combination of four references. Regardless, none of the references cited described a handle and tips configured for use by children of age 1-4 and therefore one would not be motivated to produce the claimed invention other than by impermissible hindsight reasoning. The applicant respectfully requests reconsideration and removal of the obviousness rejection of claims 1-6, 12, 16, 28 and 31-32 for failing to form a *prima facie* case of obviousness.

**Issue 2 - Whether claims 1-6, 12, 16, 28, 31-32 and 34-35 are patentable under 35 USC 103(a) over USPN 6,905,335 to Fischer in view of USPN 3,987,549 to Robertelli in view of 5,765,252 to Carr and further in view of USPN 6,836,917 to Blaustein.**

Appellant traverses the rejection of independent claim 1 and dependent claims 2-6, 12, 16, 28 and 31-32 as improper for failing to teach each and every element of the claims and for using improper hindsight. The combination of the Fischer, Carr and Blaustein patents fails to teach or suggest each and every element of the applicant's invention of independent claim 1 of a kit for cleaning a child's teeth as shown and discussed above.

The Robertelli '549 patent teaches an electric toothbrush having a straight handle. The toothbrush has replaceable cleaning tips, but none are taught to be configured and safe for use by a child aged 1-4 years old. The tips taught would not be compatible with the vestibule of a child and would likely create either injury during use or a choking hazard. The '549 patent is silent regarding use of the toothbrush and one skilled in the art would not be motivated to configure the toothbrush for children.

The combination of the Fischer, Robertelli, Carr and Blaustein patents fails to teach or suggest each and every element of the applicant's invention of independent claim 1 of a kit for cleaning a child's teeth as shown and discussed above. The cited combination provides no motivation for one skilled in the

art to assemble the specific components of claim 1 to train young children to brush teeth without resorting to improper hindsight as evidenced by the combination of four references. Regardless, none of the references cited described a handle and tips configured for use by children of age 1-4 and therefore one would not be motivated to produce the claimed invention other than by impermissible hindsight reasoning. The applicant respectfully requests reconsideration and removal of the obviousness rejection of claims 1-6, 12, 16, 28 and 31-32 for failing to form a prime facie case of obviousness.

**Issue 3 - Whether claims 7-10 and 33 are patentable over either Fischer, Boland, Carr and Blaustein OR Fischer, Robertelli, Carr and Blaustein further in view of USPN 4,406,032 to Diamant.**

Applicant traverses the rejection of claims 7-10 and 33, which depend from allowable independent claim 1 for the reasons discussed above. The combination of the Fischer, Boland, Carr and Blaustein OR the Fischer, Robertelli, Carr and Blaustein patents fails to teach each and every element of independent claim 1. The reference combination fails to teach or disclose the independent base claim 1, which requires a brush handle and tips configured for use by a child aged 1-4 years old. The Diamant '032 patent discloses a toothbrush having filaments wound around the end of the shaft or soft foam. The '032 patent is silent regarding a handle having a narrower middle that is configured for the hands of a child 1-4 years old. The foam tip disclosed is not replaceable nor is the toothbrush configured for safe use by a child. The '032 patent therefore when combined with the other cited art fails to teach each and every element of independent claim 1. Regardless, none of the references cited described a handle and tips configured for use by children of age 1-4 and therefore one would not be motivated to produce the claimed invention other than by impermissible hindsight reasoning. The applicant respectfully requests reconsideration and removal of the obviousness rejection of claims 7-10 and 33 for failing to form a prime facie case of obviousness.

**Issue 4 - Whether claims 13 and 23 are patentable over either Fischer, Boland, Carr and Blaustein OR Fischer, Robertelli, Carr and Blaustein either further in view of USPN 6,612,770 to Aoyama.**

Applicant traverses the rejection of claims 13 and 23, which depend from allowable independent claim 1 for the reasons discussed above. The combination of the Fischer, Boland, Carr and Blaustein OR the Fischer, Robertelli, Carr and Blaustein patents fails to teach each and every element of independent claim 1. The Aoyama '770 patent teaches a toothbrush having a fixed head. The '770 patent fails to address the shortfalls in the above cited art combinations in teaching independent claim 1. The '770 patent does not teach the applicant's claimed handle nor is it configured for use by a child. Furthermore,

the '770 patent does not teach an air passage for breathing, but ducts for fluid delivery or air for drying and does not indicate if it may be configured for breathing by a child during use.

**Issue 5 - Whether claims 21-22 and 27 are patentable over either Fischer, Boland, Carr and Blaustein OR Fischer, Robertelli, Carr and Blaustein further in view of USPN 6,745,427 to Trenz et al.**

Applicant traverses the rejection of claims 21-22 and 27, which depend from allowable independent claim 1 for the reasons discussed above. The combination of the Fischer, Boland, Carr and Blaustein OR the Fischer, Robertelli, Carr and Blaustein patents fails to teach each and every element of independent claim 1. The Trenz '427 patent discloses a toothbrush having a removable tip, but neither the handle or the tips are configured for use by a child of 1-4 years age. Applicant respectfully requests reconsideration and removal of the rejection of claims 21-22 and 27 for failing to teach each and every element of claim 1 and dependent claims 21-22 and 27.

**Issue 6 - Whether claim 24 is patentable over either Fischer, Boland, Carr and Blaustein OR Fischer, Robertelli, Carr and Blaustein further in view of USPN 6,000,410 to Tortorice.**

Independent claim 1 and dependent claim 24 is not taught by either the Fischer, Boland, Carr and Blaustein OR Fischer, Robertelli, Carr and Blaustein. The Tortorice '410 patent fails to teach a handle having a narrower middle or replaceable tips configured for use by children 1-4 years old. The Tortorice '410 patent teaches a fluid filled container and fails to address the above arts deficiencies. Furthermore, the '410 patent fails to teach the fluid of claim 24, which changes color during agitation to train children to brush sufficiently. The rejection of claim 24 should be reconsidered and removed.

**Issue 7 - Whether claims 25-26 are patentable over either Fischer, Boland, Carr and Blaustein OR Fischer, Robertelli, Carr and Blaustein further in view of 6,000,410 to Tortorice and US Appl. No. 2004/0161289 to Silberman.**

The Tortorice '410 fails to address the deficiencies of the above cited art combinations of independent claim 1 and therefore dependent claims 25-26 as discussed above. The Silberman 2004/0161289 publication also fails to address the deficiencies in teaching the applicant's claimed handle and replaceable brush tip for children aged 1-4. The rejection of claims 25-26 should be removed.

**Issue 8 - Whether claim 30 is patentable over either Fischer, Boland, Carr and Blaustein OR Fischer, Robertelli, Carr and Blaustein further in view of USPN 5,392,482 to Drulias et al.**

The above cited combination of patents fails to teach independent claim 1 and therefore dependent claim 30 as discussed above. The Drulias '482 patent fails to address the deficiencies of the cited art in teaching a handle and tips configured for use by a child aged 1-4 years. The rejection of

claim 30 should be reconsidered and removed for failing to teach independent claim 1.

**Issue 9 - Whether claims 36-37 are patentable over Fischer, Robertelli, Carr and Blaustein further in view of 6,253,404 to Boland et al.**

The above cited combination of patents fails to teach independent claim 1 and therefore dependent claims 36-37 as discussed above. The Boland '404 patent fails to address the deficiencies of the above cited art combination and does not teach the applicant's claimed handle configuration and tips for use by a child aged 1-4. The applicant requests reconsideration and removal of the rejection of claims 36-37 for failing to teach each and every element.

**Issue 10 - Whether claim 38 is patentable over either Fischer, Boland, Carr and Blaustein OR Fischer, Robertelli, Carr and Blaustein further in view of 6,000,410 to Tortorice and US Appl. No. 2004/0161289 to Silberman.**

As discussed in issue 7 above, the cited combination fails to teach each and every element of independent claim 1. The rejection of claim 38 should be removed for failing to teach the invention.

**Issue 11 - Whether claims 39-40, 42-44 are patentable over either Fischer, Boland, Carr, Drulias and Blaustein.**

Independent claim 39 requires a toothbrush handle having a middle dimensioned to be held by a child aged 1-4 years old and tips dimensioned from smallest to largest according to age. The combination of the Fischer, Boland, Carr, Drulias and Blaustein patents as discussed and described above fails to teach the brush and tips configured for children as claimed. None of the above cited art teaches a handle dimensioned to be gripped by a child aged 1-4. Furthermore, the above noted references are completely silent regarding the use of training tips by children aged 1-4 and their arrangement by size and age. The applicant respectfully requests reconsideration and allowance of independent claim 39 and dependent claims 38-40 and 42-44 for failing to teach each and every element of the claims.

**CONCLUSION**

Applicant respectfully submits that claims 1-10, 12-13, 16, 21-28 and 30-46 along with the entire application meet the acceptance criteria for allowance. The Commissioner is hereby authorized to charge deposit account 19-0513 for any extensions or fees required.

Date: September 24, 2007

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Respectfully submitted,

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